

New Hampshire Private Well Working Group
Report and Recommendation to the Groundwater Commission
September 16, 2009

The Private Well Working Group was convened in October 2007 by N.H. Department of Environmental Services as part of the process of revising the department's Source Water Protection Strategy. The Working Group includes a member of the SB 155 Groundwater Commission, and the Commission has expressed interest in private well questions under Issue 5, Protecting Groundwater Quality to Ensure Availability. Therefore, the recommendation in this document is directed to the Groundwater Commission, since it involves legislative changes.

The Private Well Issue

The purpose of New Hampshire's Safe Drinking Water Act is "to provide a comprehensive drinking water protection program for the citizens of New Hampshire." However, at present the statute deals only with the oversight of *public* water systems. Approximately 40 percent of New Hampshire residents rely on private wells for domestic water supply. If the water from these wells is not tested and properly treated, private wells represent a risk to public health. An estimated 20 percent of wells in the state have arsenic above the drinking water standard; in some areas it is as high as one in two wells. An estimated 33 percent of wells statewide exceed the proposed federal standard for radon, and smaller percentages exceed other health-based drinking water standards, which apply to public water systems but not to private wells.¹ Without testing for the appropriate parameters, homeowners are unable to make informed decisions about consuming water from their private wells. Approximately three percent of newly drilled wells also have insufficient yield to support normal household use. Experience in the sanitation field indicates that inadequate water supply is a health concern, since the use of alternate water supplies often involves the transport of water in containers that carry a risk of introducing microbial contaminants.

The Process

The Working Group met twice, in October 2007 and March 2008. At its first meeting the Working Group reviewed the nature of the problem (40 percent of N.H. residents using private wells; 20 percent of those with arsenic exceeding the drinking water standard; many others with radon issues), existing programs (Water Well Board, Private Well Initiative outreach, Plumbing Code, the handful of towns with private well testing requirements), issues with the household water treatment industry, and the DES private well testing recommendations incorporated into its outreach materials. The consensus from that meeting was that there is a need to better address the public health issue and that a white paper would be helpful to document the problem(s) and to identify and analyze the policy options.

¹ For further explanation, please see Private Well Working Group White Paper, rev. August 2009 and Estimated Percentages of Private Water Supply Wells Exceeding Contaminant Limits, rev. 7/15/2009

The white paper, completed in February 2008, was the focus of discussion at the second meeting of the Working Group on March 19, 2008. The white paper summarized the background information including existing programs and gaps, and described seven policy options. **At that meeting, a majority of Working Group members voted to adopt policy option B, requiring testing and disclosure to a prospective buyer at real estate transfer.** Testing would be modeled after the DES Laboratory's Standard Analysis plus radon and gross alpha, which together cost \$165 at the DES Lab (\$174 - \$240 at private labs); VOC and/or beryllium testing would be *recommended* under certain circumstances. Disclosure of available well yield information would also be required. Two people were opposed to mandatory testing and disclosure: representatives of the Home Builders and Remodelers Association (NHHBRA) and the N.H. Association of Realtors (NHAR). Their objections: it would slow real estate transactions, would hurt home sellers, and would not benefit public health because home buyers tend to pocket any reduction in price negotiated on the basis of an unfavorable water test, rather than installing treatment.

The second major policy option discussed at the March 19, 2008 Working Group meeting was a **testing requirement for new drinking water wells**. There was general support for this idea (with the exception of the HBRANH representative; the Realtor was not present), but the well drillers representatives asked to delay a vote until this had been discussed with the Water Well Board and the Water Well Association.

Since the second meeting of the Working Group, the Water Well Board and the Water Well Association met and were generally supportive of a testing requirement for new wells, but they have a number of concerns that would need to be addressed when and if legislation were to be crafted (see Remaining Issues).

Finally, drafts of this document, the white paper, and supporting documents were circulated during May and June of 2009 among Working Group members, and revisions were made to reflect the sense of the Working Group and to clarify certain background information. The revised documents (this document, the white paper, and others) were circulated among Working Group members once more during June-July 2009 before being finalized.

Recommendations

*After careful study, the Private Well Working Group recommends that the legislature amend the Safe Drinking Water Act to require testing of water supplied by **new** private water supply wells (in connection with the drilling of new wells and the deepening of existing wells).*

A majority of the Working Group's members also recommend that the testing of private wells and disclosure of test results be required prior to the transfer of real estate. Disclosure should also include available well yield information. The N.H. Association of Realtors and the Home Builders and Remodelers Association of N.H. both object to this recommendation, due to their concerns about the effect such a requirement would have on the process of closing home sales, although they do support the overall goal of ensuring safe drinking water for users of private wells. (Please see attached letters.)

Remaining Issues

A number of issues remain that would need to be addressed if the Groundwater Commission were to move ahead with crafting legislation to implement the Working Group's recommendation:

- A number of working group members support a requirement that private well testing data be reported to a state agency. This would greatly improve understanding of the geographic distribution of bedrock well water quality in New Hampshire but would require personnel and resources to implement. A suggestion was also made to designate a voluntary organization to maintain such a database.
- A number of working group members felt that testing and disclosure alone would not be sufficiently protective of public health, and favor some requirement to treat water where indicated, in order to address some or all contaminants of concern.
- Who should be responsible for taking water samples and bringing them to a laboratory, while (1) ensuring the integrity of the testing and disclosure process and (2) avoiding unnecessary delays in the process of obtaining a certificate of occupancy (CO) where the municipality chooses to take the test results into account in the issuance of a CO?
- Determining an appropriate sampling point, e.g., after the pressure tank.
- The health-based standards for radon are confusing, and better materials would need to be developed to help homeowners make sense of water test results.
- Should the private well testing requirement include additional water quality parameters whose bearing on health are secondary in nature but provide scientific information regarding the occurrence, fate, and transport of other more dangerous natural contaminants?
- How to ensure that well testing results are conveyed to the homeowner or prospective home buyer in a way that makes it clear that the well driller is not responsible for groundwater quality.
- Possible requirements for retesting in the event that bacteria is detected.
- Whether to address the vagueness of the Plumbing Code with respect to water quality. The Plumbing Code states that only potable water sources may be connected to domestic plumbing systems. "Potable" is defined in the Code with reference to "regulations of the public health authority having jurisdiction." The sense among the Working Group is that defining "potable" in terms of specific contaminants and contaminant limits would create a testing requirement for new wells and also create a *treatment requirement* for new wells whose raw water did not meet the standards. The Plumbing Code could be a useful avenue for a testing and disclosure requirement for new wells (although not by defining "potable"), but the Working Group felt that a clear legislative mandate would be appropriate.

Respectfully submitted,

Paul Susca
NHDES Drinking Water and Groundwater Bureau

for the Private Well Working Group

Members of the Private Well Working Group

Name	Affiliation
Joseph Ayotte	US Geological Survey
Patricia Bickford	NHDES Laboratory
Christine Bowman	NHDES-Drinking Water Source Protection Program
Bruce Buttrick	Code Enf. Officer/Building Inspector, Town of Bow
Kendall Buck	Home Builders and Remodelers Assoc. of N.H.
Bart Cushing	N.H. Water Well Board
Patricia Debeer	Fremont Conservation Commission
Tedd Evans	N.H. Plumbing Board
Sherry Godlewski	NHDES Environmental Health Program
Glenn Greenwood	Rockingham Planning Commission
Louise Merchant Hannan	NHDHHS Health Officer Liaison
Eugene Heighton	HERTC
Tal Hubbard	NHDES Waste Division
Brandon Kernen	NHDES-Drinking Water Source Protection Program
Brian Lockard	Health Officer Association
Bernie Lucey	NHDES Drinking Water and Groundwater Bureau
Paul Morin	Home Builders & Remodelers Association of NH
Jack Munn	Southern NH Regional Planning Commission
Julia Peterson	N.H. Sea Grant and UNH Cooperative Extension
Bob Quinn	N.H. Association of Realtors
Keith Robinson	US Geological Survey
Rick Schofield	Water Well Board
Roger Skillings	Skillings & Sons
Paul Sullivan	Home Builders and Remodelers Assoc. of N.H.
Paul Susca	NHDES-Drinking Water Source Protection Program
Terry Swain	Capital Well Co., Inc.
David Wunsch	N.H. Geological Survey

August 21, 2009

Paul Susca
Drinking Water and Groundwater Bureau
NH Department of Environmental Services
Hazen Drive
Concord, NH 03301

Dear Paul,

As a participant in N.H. Private Well Working Group(PWWG), the New Hampshire Association of REALTORS has concerns with the final recommendations which would require testing of wells prior to the transfer of real estate.

While the NHAR supports the overall goal of ensuring safe drinking water to homeowners who rely on well water, the point-of-sale mandate is not clearly defined and could lead to unnecessary and costly delays in the transfer of property. Any proposed legislative efforts are premature until details of the testing process are clarified and demonstrated to have a negligible impact on the right of homeowners to transfer property.

The NH Association of REALTORS commends you and all the members of the PWWG for your diligence and commitment to ensuring safe drinking water to homeowners.

Best regards,

Jeff Keeler

NH Association of REALTORS
Chair, Public Policy Committee



Home Builders & Remodelers Association of New Hampshire

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September 10, 2009

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Paul A. Susca
NHDES Drinking Water and Groundwater Bureau
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Mr. Susca,

The Home Builders and Remodelers Association of New Hampshire was pleased to participate in the Private Well Working Group and support the effort for a comprehensive drinking water protection program. We must, however, concur with the New Hampshire Association of REALTORS and object to the recommendation to require testing and disclosure to all potential buyers prior to any real estate transfer that involves a private well.

The Association encourages all home builders to test and disclose water quality in new wells to potential buyers and custom home clients and does not object to recommendations to the NH Legislature to consider the requirement of testing certain parameters of such wells. Naturally, that endorsement is dependent upon which parameters are to be tested and what, if any, consequences may ensue.

Our concerns for the testing of existing wells, as recommended in the report draft, are for the chilling effect that it may cause on the closing of home sales which are often an integral part of the new home buying process and the shift of responsibility to the seller that is normally born by the buyer as part of his/her due diligence.

We appreciate the efforts of the Private Well Working Group and particularly your dedication to including all points of view in the work product. We hope that our support of the overall effort and our objection to this particular recommendation will be noted in the final version of the document.

Sincerely yours,

Mark Pederzini, GMB, CAPS, CGB, CGP
President

